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Bountiful State Bank, A Utah Corporation, Farmers State Bank, A Utah Corporation, South Davis Security Bank, A Utah Corporation, and Davis County Bank, A Utah Corporation v. W. S. Brimhall, Commissioner Of Financial Institutions of the State of Utah and Walker Bank and Trust Company, A Utah Corporation : Brief of Appellants

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IN THE SUPREME COURT OF THE STATE OF UTAH

BOUNTIFUL STATE BANK, a Utah corporation, **FARMERS STATE BANK**, a Utah Corporation, **SOUTH DAVIS SECURITY BANK**, a Utah corporation, and **DAVIS COUNTY BANK**, a Utah corporation,

Plaintiffs and Appellants,

vs.

W. S. BRIMHALL, COMMISSIONER OF FINANCIAL INSTITUTIONS OF THE STATE OF UTAH, and **WALKER BANK AND TRUST COMPANY**, a Utah corporation.

Defendants and Respondents.

Case No. 1111

BRIEF OF APPELLANTS

Appeal from a Summary Judgment of the
Judicial District, Salt Lake County, Heard by
M. Hanson, Presiding

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IN THE SUPREME COURT OF THE STATE OF UTAH

BOUNTIFUL STATE BANK, a Utah corporation, FARMERS STATE BANK, a Utah Corporation, SOUTH DAVIS SECURITY BANK, a Utah corporation, and DAVIS COUNTY BANK, a Utah corporation,

Plaintiffs and Appellants,

vs.

W. S. BRIMHALL, COMMISSIONER OF FINANCIAL INSTITUTIONS OF THE STATE OF UTAH, and WALKER BANK AND TRUST COMPANY, a Utah corporation.

Defendants and Respondents.

Case No. 11807

BRIEF OF APPELLANTS

NATURE OF THE CASE

This is an action brought in the District Court of Salt Lake County by plaintiffs Bountiful State Bank, Farmers State Bank, South Davis Security Bank and Davis County Bank against W. S. Brimhall, Commissioner of Financial Institutions of the State of Utah, and Walker Bank & Trust Company, for review of a decision of the

Commissioner of Financial Institutions granting an application of Walker Bank & Trust Company for permission to establish a branch bank in Centerville, Davis County. A copy of the Findings of Fact, Conclusions and Order of the Commissioner is appended hereto. The review is authorized by Section 7-1-26, U.C.A. 1953, as amended.

DISPOSITION IN LOWER COURT

Defendant Walker Bank & Trust Company's Motion for Summary Judgment was granted by Judge Stewart M. Hanson in a Memorandum Decision dated July 18, 1969 (R. 41), and thereafter Summary Judgment was entered on July 29, 1969 (R. 46-47).

RELIEF SOUGHT ON APPEAL

Plaintiffs seeks to have the judgment of the lower Court reversed and an Order entered setting aside the Commissioner's Order, or in the alternative, reinstatement of the action in the Court below with direction to enter such Order.

STATEMENT OF FACTS

Respondent Walker Bank & Trust Company (hereafter "Walker Bank") filed its application for permission to establish a bank branch in the vicinity of 1000 South and Main Street, Centerville, Davis County, on May 21, 1968. Timely written protests were filed by appellants (R. 57-67) and a public hearing was held by the respondent Commissioner of Financial Institutions (hereafter referred to as the "Commissioner"). The hearing was concluded September 30, 1968.

As Davis County does not contain a city of the first class (Commissioner's Finding No. 8) a branch bank may, by statute, only be established in that county in a city or town which does not contain a bank as opposed to a branch bank (Section 7-3-6, U.C.A. 1953, as amended). The site of respondent Walker Bank's proposed branch is within the city limits of Centerville in which is located a branch of appellant Bountiful State Bank but in which no unit bank is situated. The proposed site, however, is located away from the business and population center of Centerville near the corporate limits of Bountiful, Davis County, which city does contain banks as opposed to branches and is directly between the main office of appellant Bountiful State Bank and its Centerville branch, being less than one-half mile from the latter (Exhibit V).

It is undisputed that the existing banks in the area of the proposed branch are offering adequate banking service (R. 69, 472). Because of the nature of Centerville as a "bedroom" for Salt Lake City, the banking activity in that area is not of the magnitude that might be expected for the population present (R. 440-41). Significantly, however, a survey conducted of the area by Dr. Milton P. Matthews, a highly qualified expert (Exhibit A) called by appellants at the hearing before the Commissioner showed that although 21.3 percent of the families surveyed had their main checking accounts in banks outside of South Davis County and 28.6 percent of their second checking accounts outside of that area (Exhibit G) none of the 100 Centerville families surveyed, which constituted a fair statistical sample of Centerville residents (R. 436),

banked outside of the area because of any inadequacies in the service rendered by the existing banks (R. 438).

Feeling aggrieved by the Commissioner's Findings of Fact, Conclusions and Order dated February 28, 1969, appellants instituted the subject suit as provided under Section 7-1-26, U.C.A. 1953, as amended, and following entry of the lower court's Summary Judgment this appeal is taken.

ARGUMENT

I. BECAUSE THE DECISION OF THE COMMISSIONER ARBITRARILY AND CAPRICIOUSLY IGNORED THE IMPACT OF THE PROPOSED BRANCH UPON THE OPERATIONS OF BOUNTIFUL STATE BANK, IT MUST BE SET ASIDE.

The Utah branch banking statute provides as follows:

The business of every bank shall be conducted only at its banking house and every bank shall receive deposits and pay checks only at its banking house except as hereinafter provided.

With the consent of the bank commissioner any bank having a paid-in capital and surplus of not less than \$60,000 may establish and operate one branch for the transaction of its business; provided, that for each additional branch established there shall be paid in an additional \$60,000 (capital and surplus).

All banking houses and branches shall be located either within the corporate limits of a city or town, or within unincorporated areas of a county in which a city of the first class is located.

Except in cities of the first class, or within

unincorporated areas of a county in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank. No unit bank organized and operating at a point where there are other operating banks, state or national, shall be permitted to be acquired by another bank for the purpose of establishing a branch until such bank shall have been in operation as such for a period of five years.

The term "branch" as used in this act shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business at which deposits are received or checks paid or money lent.

Any bank desiring to establish one or more branches or offices shall file a written application therefor in such form and containing such information as the bank commissioner may reasonably require. *No bank shall be permitted to establish any branch or office until it shall first have been shown to the satisfaction of the bank commissioner that the public convenience and advantage will be subserved and promoted by the establishment of such branch or office.* The bank commissioner may, at his discretion, hold a public hearing on any application to establish a branch. He shall give notice of such hearing by publication in three successive issues in a newspaper of general circulation in the county in which the branch is to be established. The decision of the bank commissioner granting or denying an application to establish a branch shall be in writing, state the reasons therefor, and shall be mailed to the applicant and all protestants.

The bank commissioner may by order permitting the establishment of such branch or office designate and limit the character of work and service which may therein be performed.

No branch shall be established at a location outside the corporate limits of a city or town in such close proximity to an established bank or branch as to unreasonably interfere with the business thereof.

Any corporation or officer thereof violating any of the provisions of this section is guilty of a misdemeanor.

Section 7-3-6, U.C.A. 1953, as amended (emphasis supplied).

The proposed site of respondent Walker Bank's branch is directly between the principal banking house of appellant Bountiful State Bank and its Centerville branch (Exhibit V), and within one-half mile of Bountiful State Bank's Centerville branch (R. 383) and is so located, or would be so located, that substantially all customer traffic directed to appellant's Centerville branch, which is located in downtown Centerville, from the south must pass by or near the proposed branch (R. 194).

This intrusion between two of the banking offices of protestant Bountiful State Bank is a factor which must be considered in determining the public convenience and advantage if the effect of the proposed branch would be to unreasonably interfere with existing operations. This is especially the case in view of the general banking provision which provides that the Commissioner

. . . may refuse to grant his approval . . . when

the location or field of operation of the proposed business shall be in such close proximity to an established business subject to this title that such established business might be unreasonably interfered with . . .

Section 7-1-26, U.C.A. 1953, as amended.

Respondent's proposed branch would significantly interfere with the operation of the existing Centerville branch.

Mr. L. C. Jeppsen, President of Bountiful State Bank (R. 379), testified that 90 percent of the savings deposits and 83 percent of the checking deposits in dollar volume of the Centerville branch of Bountiful State Bank are from depositors who reside in Centerville (R. 382) which means that the greater bulk of that branch's customers reside within one-half mile of the branch (R. 383). He further testified that the Centerville branch, which had been in operation for about six years, had been disappointing in its growth (R. 391). Indeed, the growth during the first several years was nominal and later growth has been at an even lesser annual rate. (R. 381). He testified that because of the natural loss in accounts that would result from the introduction of the proposed branch (R. 401) and because of the advertising of respondent Walker Bank (R. 397) that the overall impact of the opening of the proposed branch upon the Bountiful State Centerville branch would be disastrous (R. 383), that future growth of the branch would be crippled (R. 397, 401) and that the main bank would have to continue the burden of carrying the unprofitable

branch (R. 388). This testimony is supported by the experience of appellant Davis County Bank upon the opening of Bountiful State Bank's Centerville branch (stipulated testimony of Ezra T. Clark, President of appellant Davis County Bank (R. 469-70)).

From the above it is submitted that the Commissioner's order must be set aside as a matter of law on the ground that the proposed branch's interference with the existing branch precludes a finding that the public convenience and advantage would be subserved thereby.

Even if the evidence does not preclude an order in respondent Walker Bank's favor the Commissioner's order should still be set aside. The only consideration given by the Commissioner to this grim outlook for appellant Bountiful State Bank's branch was his finding that the stability of the existing banks would not be jeopardized (Finding No. 11) and his conclusion that there would not be unreasonable interference with operations or jeopardy to the depositors of the existing banks (Conclusion No. 3). This clearly indicates that the Commissioner is applying the standard suggested by respondent Walker Bank (R. 473-74, 484-86) that he need consider only the safety of the existing banks and the protection of their depositors and that he has not considered the healthy and profitable operation of the existing banks as is required in determining the public convenience and advantage and for this failure to employ the proper standard of convenience and advantage, the Commissioner's Order should be set aside with instructions to him at a new hearing on this matter to consider the impact of the operation of the proposed branch upon the existing branch bank and existing unit

banks and the effect of the proposed branch on the existing branch and banks insofar as such operation must be inquired into to determine the public convenience and advantage.

II. BECAUSE THE COMMISSIONER FAILED TO CONSIDER AND MAKE FINDINGS AND CONCLUSIONS WITH RESPECT TO THE MATERIAL ISSUES OF THE GEOGRAPHIC LOCATION OF THE PROPOSED BRANCH AND THE IMPACT OF THE PROPOSED BRANCH ON BOUNTIFUL STATE BANK'S EXISTING BRANCH, HIS DECISION MUST BE SET ASIDE.

Fair treatment requires that appellants be accorded opportunity for judicial review of the Commissioner's decision, and the right to review has been codified by Section 7-1-26(4), U.C.A. 1953, as amended. The scope of that review has also been set forth by the legislature in that section, which provides that the "reviewing court shall have power to hold unlawful and set aside any act, decision or ruling of the bank commissioner found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law."

To provide meaningful judicial review, giving substance to appellants' rights in this case, there is a requirement that appellants be permitted to participate in a fair hearing and that thereafter the Commissioner make findings and conclusions setting forth the facts upon which he relied and articulating the bases of his decision. In the absence of such hearings, findings and conclusions there is nothing upon which to base appellate review, or as

stated by the Court in *Zion's First National Bank v. Taylor*, 15 Utah 2d 239 at page 241:

. . . we are of the opinion that a public hearing should be had in most, if not all, branch bank applications. This is particularly true where a protest has been filed and there is a possibility of a court review. Had such hearing been held in the instant case, there would probably be an adequate record for a court to review. As it is, the record contains only the application and letter of First Security, Zion's letter of protest, the report of the examiner, and a copy of the certificate. Furthermore, while we realize that it is appropriate and perhaps necessary for the Commissioner to make ex parte investigations to aid him in making his decision, the instant case is complicated by the fact that he did not prepare any written findings or reasons to support his action. The recitation in the certificate that First Security "has complied with all the provisions of Section 7-3-6" does not supply this deficiency.

Here there is no lack of public hearing, but there is glaring absence of "written findings or reasons to support his action."

The branch operations of banks within the State of Utah are governed by a scheme which is prohibitory and restrictive in nature, as appears from reading the principal branching statute, set forth at page 4, *supra*, and Section 7-3-6.3, U.C.A. 1953 as amended, which provides that:

From and after the effective date of this act no unit bank and no branch bank shall be established or authorized to conduct a banking business

except as hereinbefore in section 7-3-6 expressly provided.

and this court has so held in *Walker Bank & Trust Co. v. Taylor*, 15 Utah 2d 234, 236-37.

It is apparent that the legislature has intended that banking competition in a city or town which contains a unit bank and which is located in a county which does not contain a city of the first class must be limited to competition from new unit banks and that no competition may be permitted through the entry of branch banks into the city. The purpose of this limitation appears to be for the protection of the established unit banks, or as was stated by the Court in *Walker Bank & Trust Co. v. Taylor*, supra, at 237:

In 1911, the legislature enacted a statute which absolutely prohibited branch banking. It was not until 1933 that the legislature relaxed this prohibition and permitted branching under certain conditions and circumstances. During the period between 1911 and 1933 the legislature evidently was of the opinion that branch banking was not in the public interest, possibly because it might impair the stability of the existing banks. This reasoning could well have influenced the law makers when they saw fit to allow branch banking, but only under certain restrictive conditions. [footnotes omitted]

As Centerville does not have located within its corporate limits a unit bank, the Commissioner may permit the opening of a branch bank within that city if he finds that the public convenience and advantage will be sub-

served thereby, but he cannot permit the opening of a branch bank in the city of Bountiful.

One of the issues presented to the Commissioner is whether he should, or could approve the application when the obvious design of the application is to compete in Bountiful, but the technical corporate location of the branch is within the city of Centerville. The proposed site of respondent Walker Bank's application is located at the edge of the city of Centerville, directly adjacent to the city limits of Bountiful, as appears from examination of Exhibit V. This location is away from the residential and business center of Centerville, as can be seen through examination of Exhibits B through F, and U, in conjunction with the testimony of Dr. Matthews (R. 421-23), and it also appears that any logical expansion of the city of Centerville will be to the north (R. 425) rather than southward toward the city of Bountiful. Indeed, there would appear no need for a second branch bank in the city of Centerville in view of its 1967 population as estimated by respondent Walker Bank of only 3,434 (Exhibit 1, p. 20).¹

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¹The obvious and clear deduction from this physical evidence is that the intent of respondent Walker Bank in filing its Application is to compete in the Bountiful area rather than within the city of Centerville. This obvious deduction is confirmed by the testimony of respondent Walker Bank's witness at the hearing before the Commissioner. Mr. Robert E. Roll testified at that hearing that he felt the proper location for the branch would be in a proposed shopping center located within the city of Bountiful:

Q. [Mr. Moyle] At what time were you first consulted as to the establishment of a branch bank in Davis County?

At the administrative hearing, respondent Walker Bank took the position that its branch was to serve the entirety of South Davis County and only incidentally Centerville and that so long as their proposed branch bank was to be located within the corporate limits of Centerville, the Commissioner could not deny the application

Footnote, continued

A. [Mr. Roll] If I may be so bold, I saw this article that we talked about earlier regarding this ten million dollar shopping center for Penneys in Bountiful there and at that point I approached management and said, "I think this would be a good place for a branch bank." They said, "Why don't you run some preliminary figures on it and see what you come up with?"

Q. [Mr. Moyle] Let's make it clear. Then you made this suggestion after you read about the Bountiful Shopping Center as it appeared in the newspaper?

A. [Mr. Roll] Yes.

(R. 162)

Q. [Mr. Moyle] All right, your first interest was one that you created among yourselves — it may well have been other people in the bank were also working along these lines, but your first indication was a newspaper article regarding the Bountiful Shopping Center and you thought the Bountiful Shopping Center might justify a branch bank?

A. [Mr. Roll] Justify a branch bank, yes.

(R. 163)

This preference for Bountiful was confirmed by the testimony of M. D. Borthick, a member of the general administrative staff of respondent Walker Bank (R. 194), who candidly stated at the hearing that he would prefer the branch to be in the shopping center (R. 232-33), which from the surrounding testimony of Mr. Borthick indicates the proposed shopping center located in the city of Bountiful.

even if the Commissioner determined that the branch was established for the purpose of competing in Bountiful or other areas outside Centerville and the location was selected solely for the purpose of avoiding legislative policy (see, R. 480-84). Appellants took the contrary position arguing that under the evidence presented the proposed location was contrary to the law and even if not the Commissioner had the discretion to deny the application if he determined granting the application would defeat the legislature's purposes without compensating benefits to the to the public (R. 500-01). Despite the presentation of evidence and argument as to this material issue, the Commissioner's findings and conclusions are silent as to it. This silence is in the face not only of appellants' general right to review, but the legislative command that the Commissioner must give his decision granting or denying the application in writing and state the reasons therefor (Section 7-3-6, U.C.A. 1953, as amended).

Since the presentation of the subject application to the Commissioner this court has decided *Walker Bank & Trust Co. v. Brimhall*, No. 11628, November 20, 1969, Utah 2d, P. 2d, holding that in the contiguous metropolitan area of Ogden and South Ogden a similar "over the line" application by Walker Bank could not be denied on geographical grounds alone in that case. This court then limited its holding by stating

... Nonetheless, it seems to us that geography, in a given case, could be some sort of a factor con-

tributing to 'public convenience and advantage' established 'to the satisfaction' of the Commissioner Utah 2d at
 P.2d at

The differences between the metropolitan Ogden area and the area surrounding respondent's proposed site herein are many and obvious. South Ogden and Ogden are part of a contiguous and continuous metropolitan area. In that area Walker Bank and Trust Company, the largest state bank in Utah and a subsidiary of the massive Western Bancorporation holding company (Exhibit Z), was attempting to enter an active commercial-industrial area in competition with such existing major banks as First Security Bank of Utah, N.A. and Commercial Security Bank. Centerville, on the other hand, is a separate and distinct residential community (see Exhibits B through F) and it and the nearby cities and towns are serviced essentially by local banks, the protestants herein. It is impossible for this court because of the Commissioner's failure to make findings and conclusions on this issue to determine whether the proper standard has been applied. Failure of the Commissioner to make findings after issue was joined on this issue is ground for setting his order aside.

The failure of a trial court to make findings on material issues is reversible error.

We pass now to a consideration of the second assignment of error, i.e., the failure of the court to make findings of fact on certain issues. It is

well settled in this jurisdiction that failure to make findings of fact on material issues is error, and is ordinarily prejudicial. *Dillion* 9-12 *Implement Co. v. Cleveland*, 32 Utah 1, 88 P. 670; *Holm v. Holm*, 44 Utah 242, 139 P. 937; *Snyder et al. v. Allen et al.*, 51 Utah 291, 169 P. 945; *Hall et al. v. Sabey*, 58 Utah 343, 198 P. 1110; *Baker v. Hatch*, 70 Utah 1, 257 P. 673; *Prows v. Hawley et al.*, 72 Utah 444, 271 P. 31; *Simper v. Brown*, 72 Utah 178, 278 P. 529; *Piper v. Eakle*, 78 Utah 342; 2 P. 2d 909; *West v. Standard Fuel Co.*, 81 Utah 300, 17 P. 2d 292; *Parowan Mercantile Co. v. Gurr et al.*, 83 Utah 463, 30 P.2d 207; *Pike v. Clark*, 95 Utah 235, 79 P.2d 1010. Failure to make findings on material issues is not prejudicial, if no findings, other than in support of the judgment would have been permissible. *Sheppick v. Sheppick et al.*, 44 Utah 131, 137, 138 P. 1169; *Snyder v. Allen*, supra; *Piper v. Eakle*, supra. And of course failure to make findings upon immaterial issues, or issues which would not affect the judgment of the court, is not ground for reversal. *Hall et al. v. Sabey*, supra; *Mills v. Gray*, 50 Utah 224, 167 P. 358; *Gray v. Defa*, 107 Utah 272, 153 P. 2d 544; *Huber v. Newman*, 106 Utah, 363, 145 P.2d 780....

Duncan v. Hemmelwright, 112 Utah 262, 269-70.

The same reasoning which applies to a trial court must be even more strongly applicable to the Commissioner of Financial Institutions. In order to determine whether the Commissioner's actions were lawful, the reviewing court must be aware of the legal standards against which the Commissioner measured respondent Walker Bank's application.

There is no basis other than speculation upon which we can conclude the reasons for which the Commissioner omitted to make findings and conclusions with respect to this issue, and under such circumstances, we cannot conclude that the Commissioner was not operating under a misconception of the applicable law. This must be contrasted with the situation which was presented to this court in *Walker Bank & Trust Company v. Brimhall*, supra, wherein the Commissioner made a specific conclusion as to this issue as set forth in the opinion of Justice Ellett, concurring and consenting (concurred in by Chief Justice Crockett) permitting the court in its opinion to specifically determine the grounds upon which the Commissioner acted.

A situation, similar to the one herein, involving a failure to make findings and conclusions with respect to a principal issue was presented to this court in *Salt Lake City v. Industrial Commission*, 103 Utah 581. In reviewing a decision of the Industrial Commission, Chief Justice Wolfe, speaking for the court, determined that the Commission had ignored one of the basic issues presented at the hearing:

As already indicated, the finding quoted above is subject to a second interpretation. That is, it may be construed as relating only to the question of the origin of the fight. If this interpretation is accepted, then there is no finding on the vital issue as to whether or not the applicant was acting in

willful violation of the rule for there is no specific finding that he had the permission of foreman or assistant foreman to take the screens. Under such an interpretation the case must be reversed for we cannot assume that the Commission, if it had made a finding on this issue, would have resolved the conflict in favor of the applicant.

103 Utah at 587

and further:

. . . The record, when taken as a whole, indicates that the Commission did not consider the first aspect of the case, that is, whether the breaking of the rule by the applicant for reasons tantamount to being personal to himself itself constituted a departure. There would, therefore, be no logical or reasonable basis for assuming that the Commission would have found either one way or the other on the conflicting evidence relating to the applicant's knowledge of the rule, or, if he had knowledge of the rule, that its effect had been suspended by permission given to take the screens.

103 Utah at 588.

The Court's opinion was later modified at 103 Utah 595. The Chief Justice there indicated that the case was based in part on an indication in the Commission's findings which led the court to believe that had the Commission considered the issue, they would have reached a different conclusion. In view of the complete absence of findings or conclusions in the instant case touching upon the issue of geographic location, the court cannot conclude that the Commissioner would have reached a conclusion

in favor of respondent Walker Bank in view of the evidence presented. Judicial review of the administrative hearing can only assure protestants of the enforcement of their rights if the reviewing court determines that the proper legal bases were applied to the facts as presented. Had the Commissioner made findings of fact with respect to this issue, then it could be determined upon review if the proper standard had been applied or, in the alternative, if the wrong standard was applied, whether or not application of the correct standard would change the results in view of the facts found. In this instance, however, there is no recourse but to set aside the Commissioner's order with instructions to him, should a new application be made by respondent Walker Bank, to consider the application under guidelines set forth by this court in *Walker Bank & Trust Co. v. Brimhall*, supra, and herein as to the legal requirements to be considered.

The identical reasoning applies to the issue of the impact of the proposed branch upon the Centerville Branch of Bountiful State Bank. Once again diametrically opposed legal bases were proposed by appellants and respondent Walker Bank. The latter argued that the profitability of the existing branch and even the profitability of Bountiful State Bank taken as a whole was not an issue which could be properly considered by the Commissioner, that he was limited in his consideration only to the determination of whether or not the deposits of the public in the bank were secure and whether or not the bank could survive (R. 473-74, 484-86). Appellants, on

the other hand, argued that profitability of both the bank as a whole and its Centerville branch were factors to be considered by the Commissioner in determining the effect of the proposed branch on the public convenience and advantage (R. 501-02). Evidence was squarely presented on the issue, and the overwhelming evidence supports the proposition that the proposed branch, if opened, would have a disastrous effect upon the operation of the existing Centerville branch. Once again, there is a complete absence of findings and conclusions by the Commissioner as to what legal standard he applied in reaching his decision, and it is improper to assume in view of the evidence that he would have found in favor of respondent Walker Bank had he applied the legal principles presented by appellants in Point I above. For the benefit of the public and the Commissioner in later applications of the branch banking statute as well as this, it is necessary that the Court set aside the Commissioner's order with instructions to him as to the legal guidelines applicable to branch banking applications.

CONCLUSION

For the foregoing reasons, it is submitted that the Order of respondent Commissioner was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; that the Court below improperly entered Summary Judgment against appellants, and that the decision of the Court below should be reversed and an

Order entered herein setting aside the Commissioner's Order, and awarding appellants their costs herein.

Respectfully submitted,

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App. I

STATE OF UTAH

Office of the Commissioner of Financial Institutions
Salt Lake City

In the Matter of the Application of
WALKER BANK & TRUST COM-
PANY for permission to establish a
branch bank in the vicinity of 1000
South and Main Street, Centerville,
Davis County, Utah.

} FINDINGS OF
FACT,
CONCLUSIONS
AND ORDER

FINDINGS OF FACT

1. That on May 21, 1968, Walker Bank & Trust Company, 175 South Main Street, Salt Lake City, Utah, filed with the Commissioner of Financial Institutions its application for permission to establish a branch bank on the vicinity of 1000 South and Main Street, Centerville, Davis County, Utah, using a branch bank application form prescribed by the Commissioner.
2. That the Commissioner had notice of the above application mailed to all banks in Davis County and others and he had notice of the application published in three successive issues of The Salt Lake Tribune, a newspaper having general circulation in the Davis County, Utah, commencing May 25, 1968.
3. That written protests to the granting of this application were received from Farmers State Bank, South Davis Security Bank, Davis County Bank, Bountiful State Bank, Clearfield State Bank, North Davis Bank, and Barnes Banking Company.
4. That the Commissioner called a public hearing for consideration of the application to be held in Room 303, State Capitol Building, Salt Lake City, Utah, at

App. II

ten o'clock a.m. on September 25, 1968. He had notice of the hearing mailed to all banks located in Davis County and others and published notice of the hearing in three successive issues of The Salt Lake Tribune, commencing September 6, 1968. The hearing was held as noticed and was continued on September 26 and September 30, 1968, on which latter date it was concluded.

5. That applicant was represented at the hearing by its Attorney, H. R. Waldo, Jr., of Jones, Waldo, Holbrook & McDonough. Counsel representing protestants at the hearing were: O. Wood Moyle III of Moyle & Moyle for Farmers State Bank, Charles E. Bradford of Bradford & Forbes for South Davis Security Bank, Gordon A. Madsen for Bountiful State Bank, Keith L. Stahle for Davis County Bank, and Raymond W. Gee for Clearfield State Bank. Others who had filed written protests to the application were not represented at the hearing.
6. That the filing of written briefs with the Commissioner was waived by attorneys for both the applicant and the protestants who appeared at the hearing and no such briefs were filed.
7. That Walker Bank & Trust Company is one of the oldest and largest state chartered banks in the State of Utah. Its main office is in Salt Lake City and it has twelve branches in Salt Lake County (eleven of which are presently operating) and branches in Price, Provo and Logan which are presently operating.
8. That Centerville is a city of the third class and there are no banks (as distinguished from branches of banks) located within the city limits of said city. There is no city of the first class in Davis County.
9. That applicant bank has capital and surplus of not less than \$60,000 for each branch it is presently oper-

App. III

ating and an additional \$60,000 of such capital and surplus for the proposed branch (Exhibit 1, page 49).

10. That the proposed branch would be located on a parcel of land fronting on 1000 South (Pages Lane) near the intersection of that street with Main Street (State Highway No. 106). Such parcel of land is located entirely within the city limits of Centerville, Davis County, Utah.
11. That there are within the city limits of Centerville a branch of the Bountiful State Bank but no other banks or branches. Other banks or branches in South Davis County (that part of Davis County south of the Farmington cross-roads — Tr. 26-27), the dates such banks or branches were organized or established and the distance of such banking facilities from the proposed branch of applicant are as shown on page 59 of Exhibit 1, Table IV-10. All of such banks and branches have operated from the locations indicated a sufficient period of time to have an established business at such locations. All of the banks operating in South Davis County are financially stable and secure institutions and such stability would not be jeopardized or the interests of the public impaired by the establishment and operation of the proposed branch. Existing banks have been able to compete successfully with other financial institutions and South Davis Security Bank, established in May of 1963, was able to enter the area, become established and increase its loans, deposits and resources without preventing the other banks in the area from increasing their loans, deposits and resources also (Exhibit 1, Chapter IV, pp. 42-64; Tr. 254, 260-263, 265-268, 270-271, 275-276, 301-304, 312-315, 339). Total resources of all South Davis County banks increased from \$22,600,000 December 31, 1963, which was the last year of entry of a new unit bank into the area, to \$34,250,000 December 31, 1967.

App. IV

12. That the proposed branch would supply the full range of banking services offered by the applicant bank in its other banking offices, including drive-in tellers' windows, safe-deposit boxes, checking and savings accounts, the Walker Bankard (a bank credit card service), access to the trust department operations of the applicant bank (Tr. 142, 148) and inter-branch transactions (Tr. 319-320).
13. That the applicant bank has a lending limit to any one person or corporation of approximately \$2,865,000 (Tr. 77). In the South Davis County area, the largest lending limit of any of the existing banks is approximately \$90,000 (Tr. 77). The ratio of banking facilities to population indicates that there are fewer banking facilities in the South Davis County area to serve the population than in the State as a whole (Exhibit 1. p. 50; Tr. 80-81, 101-103, 411-412).
14. That applicant has a number of existing customers residing or having officers or places of business in South Davis County and Centerville (Tr. 16-24, 86, 89-90; Exhibit 7).
15. That the financial condition and history of the applicant bank and its management demonstrate its capacity to successfully manage and operate the proposed branch.
16. It appears that the economic effect of the proposed branch and its sources of business would include all of the Centerville, Farmington Bountiful, West Bountiful, Woods Cross, North Salt Lake, and unincorporated areas of South Davis County (Ex. 1, pp. 2, 16; Tr. 26-27, 119-121). This area has experienced a substantial growth in recent years, as measured by new industry (Tr. 72-73), employment, wages, income and sales tax collections (Ex. 1, pp. 16-18, 41; Ex. 8-12; Tr. 126-135, 191-210, 378-380, 399-

App. V

406). Population has increased substantially (Ex. 1, pp. 17-21, 81-83; Tr. 123-126, 374-377, 398; Ex. 7) and estimates of future population for the area indicate a substantial growth (Ex. 1, pp. 18, 21, 125-126, 309, 354-355, 398). Growth of the economy in the future is likely to continue (Ex. 1 pp. 18, 29, 33, 40; Tr. 72-74, 204, 206-209, 268-270, 275, 309-310, 345).

CONCLUSIONS

1. Due notice of the receipt of this application has been given as required by law and a hearing was held as permitted by law.
2. The applicant bank has the necessary capital and surplus to permit the establishment of an additional branch bank.
3. The Commissioner finds that because of the substantial economic growth in South Davis County in recent years, increased competition from the proposed branch bank would not unreasonably interfere with the operation of the existing banks and branches which are located in this area. It would not jeopardize the depositors of such banks, would not interfere with the ability of these banks to maintain their financial strength and would not impair their ability to compete with the applicant bank and other banks. The vitality of this area is demonstrated by new industry and building in the area and increases in employment, wages, income and sales tax collections. Population has increased substantially and is likely to continue in the future. In 1967, South Davis County had a population per banking office of in excess of 7,200 people and the State as a whole had a population per banking office at that time of 6,247. An additional banking facility to serve this expanding economy would subserve and promote the public convenience and advantage.

App. VI

4. The public convenience and advantage would be subserved and promoted by the establishment of the proposed branch at the location proposed and there is no reason to limit the character of work or service to be performed at such branch. Applicant bank has a number of existing customers residing or having offices in or places of business serving South Davis County and it would be for the convenience and to the advantage of such customers that the proposed branch be located in the area. Furthermore, if the proposed branch bank is established, the general public would be afforded the choice of another banking facility with substantially larger lending limits than any other bank in the area.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commissioner of Financial Institutions hereby makes the following

ORDER

The application of Walker Bank & Trust Company for permission to establish a branch bank in the City of Centerville, Davis County, Utah, in the vicinity of 1000 South Street and Main Street is hereby approved.

Dated at Salt Lake City, Utah, this 28th day of February, 1969.

W. S. Brimhall, Commissioner
State Department of Financial
Institutions